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ABSTRACT

This report presents a history and overview of the collective bargaining process and trade unions in the Federal Republic of Germany. Topics covered include the following: (1) social partners--trade unions and the employers' associations; (2) the history of free collective bargaining; (3) free collective bargaining after World War II; (4) the Collective Bargaining Act; (5) the collective wage, framework, and basic agreements; (6) equal rights for all; (7) partners and parties to collective agreements; (8) the round of negotiations, arbitration, and industrial action; (9) strike and lockout; (10) examples of collective agreements in practice; (11) works constitution and codetermination; (12) foreign employees also entitled to vote; (13) the sociopolitical aims of the trade unions; and (14) outlook for the future. A list of addresses of union and employer groups is included in the report. (KC)

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Committed to partnership

- Free collective bargaining in the Federal Republic of Germany/

Social partners: trade unions and the employers' associations -

by

Wilhelm Lange

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Committed to partnership

- Free collective bargaining in the Federal Republic of Germany/Social partners: trade unions and employers' associations -

The question of a just wage for work done is as old as work itself. No-one has ever found a definite answer to the satisfaction of all those concerned. There is no law which prescribes that a secretary in the Federal Republic of Germany should earn twice as much as a cleaner, and a motor mechanic three times as much per hour.

Society not only assesses work according to its degree of importance or the qualifications required but also according to supply and demand. If there is a manpower shortage in one particular economic sector, there are better pay prospects than in another sector where there is no lack of personnel. Then there is a third factor: the decisiveness of the employers' and employees' arguments. If, for example, a solitary employee demands higher wages, longer holidays or shorter working hours, he will meet with little success. But if all the company employees band together - and this applies even more to the collective power of trade-union members in their particular industrial sector - they can achieve more than individual persons.

Even so, this manner of fixing wages must not be subjected to the law of strength which would resemble an all-in wrestling match. On the contrary, the employees, who are members of trade unions, and the employers, who are similarly organized in their associations, must abide by the rules laid down by the Employment and Collective Bargaining Act. In Article 9, Paragraph 3, of the Basic Law, the legislators have accorded them the right to regulate wages and salaries, as well as working conditions, themselves. The procedure to be adopted in so doing is set out in the 1949 Collective Bargaining Act.

Here, too, the legislators have held back. They have only regulated the Collective Bargaining Act: its application, however, has been left to the two sides in the collective bargaining process, and, in the case of a dispute, to the labour courts.

Free collective bargaining - "Tarifautonomie" - is the "Magna Carta" for cooperation between employers and employees which, even after bitter arguments, has to end in a reconciliation of interests. Some 7,000 collective agreements on behalf of 20 million gainfully employed persons are concluded or amended yearly. The importance of free collective bargaining for the distribution of the national product, the state of the labour market, economic and social life is the inevitable result.

The hard fought-for freedom of association - the history of free collective bargaining

The essence of free collective bargaining is the freedom of association, the right on the part of employees and employers to join together in trade unions or associations. Although this right is taken for granted in a parliamentary democracy nowadays, it had to be bitterly fought for over decades. Even as late as 1854, the German Bundestag of that time (in no way comparable with today's parliament in Bonn) banned associations of this nature. But the prohibition was unable to stand up to the millions of workers pressing for joint representation of their interests at the dawn of the Industrial Age. The ban was lifted in Saxony in 1861, and in Prussia in 1867. Two years later, in a new Industrial Code, the 22 states in the North German Confederation, under Prussian leadership, raised all bans on freedom of association. In 1873, printer-journeymen, who had meantime formed trade associations in Leipzig, signed the first-ever collective agreement with their employers.

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The ice was broken. Following the abolition of the "Sozialistengesetz" (a law against Socialists) in 1890, collective agreements regulating working conditions spread more and more. Socialist and Christian trade unions sprang up one after another. Collective agreements, however, were not recognized by act of law until 1918, after the end of World War I. They were declared to be "direct, mandatory and generally binding". In other words, they had to be complied with by all parties to collective agreements.

The general application was embodied in Articles 159 and 165 of the Constitution of the first German Republic ("Weimar Republic") of 1919. But there was still no completely free collective bargaining: on the contrary, it was restricted by compulsory state arbitration. If the parties to a collective agreement failed to reach a compromise in an industrial dispute, the state was entitled to intervene and lay down new working conditions.

The National Socialist dictatorship (1933-45) abolished these arduously won freedoms once more and replaced them with state pay scales. The trade unions were dissolved, their assets confiscated. All employees were obliged to join the "Deutsche Arbeitsfront". A new beginning was not possible until after the end of World War II. In 1946, the Western Occupation Powers allowed the first trade unions to be formed.

Part of democratic order - free collective bargaining after World War II

The resurrection of free collective bargaining after World War II was firmly supported by Konrad Adenauer, who later became Federal Chancellor, and Hans Böckler, who was subsequently the first chairman of the Federation of German Trade Unions (DGB). Both were convinced that the right of the trade unions and employers to regulate remuneration and working conditions without outside interference was an indispensable part of democratic order. Böckler, who was chairman of the trade-union advisory board in the British-American Zone at that time, outlined to Adenauer, as president of the Parliamen-

(3)

tary Council in Bonn, the concepts of his organization for the embodiment of free collective bargaining in the Constitution of the Federal Republic of Germany:

> "The formulation of the right of association is of particular importance for the trade unions. The freedom of association (Koalitionsfreiheit) must be embodied as a provision in its own right and not, as was the case in the Weimar Constitution, be combined with the general freedom of association (Vereinsfreiheit). The right to form associations to safeguard and improve working and economic conditions must be guaranteed to everyone and all professions. All measures seeking to restrict or impair this freedom are illegal."

And so it came to pass. The Parliamentary Council adopted this formulation almost verbatim from Böckler's letter in Article 9, Paragraph 3 of the Basic Law:

> "The right to form associations to safeguard and improve working and economic conditions is guaranteed to all trades, occupations and professions. Agreements which seek to restrict or impair this right shall be null and void; measures directed to this end shall be illegal."

In 1968 a further sentence was added in the Basic Law which also places industrial disputes under the protection of the Constitution:

> "Measures taken pursuant to Articles 12, 35, 87 and 91 of the Basic Law (public safety and order, aversion of dangers to safety) may not be directed against any industrial conflicts engaged in to safeguard and improve working and economic conditions."

Compulsory state mediation was no longer provided for.

The Collective Bargaining Act - just 15 paragraphs long

The Collective Bargaining Act is the statutory basis for 20 million employment contracts which regulate the wages and salaries of employed persons , working hours, holidays, 13th monthly income, bonuses, continued payment during illness, allowances for difficult work, company pensions and capital-accumulation benefits. Since the Act came into force in 1949, 221,000 collective agreements - broken down into trades and regions - have been concluded. 44,000 are in force at the present time.

The Act, which consists of no more than 15 paragraphs, outlines in Paragraph 1 "the rights and obligations of the parties to a collective agreement and contains legal norms concerning the substance, conclusion and termination of working conditions".

The capacity of being party to a collective agreement, i.e. the right to conclude collective agreements, is the prerogative of the trade unions as far as employees are concerned. They must be freely formed, democratically structured employees' associations which, vis-à-vis their opposite numbers - the employers, the state and social organizations - are independent and prepared, if needs be, to resort to industrial action to realize their demands.

On the employers' side, the right to collective bargaining is not restricted to associations or central organizations: individual employers can also conclude collective agreements - even if they belong to an employers' association. In the case of this provision, the legislators have assumed that individual employers - if only because of their power of disposal over the means of production and their right to organize work - qualify as opposite numbers for the trade unions. In the relationship between the law and collective agreement, the works association and employment contract, the agreement most favourable to the employees is the one that counts. If, for instance, a collective agreement between trade sector andtrade union provides for 30 days holiday for employees, but the company agreement 32 days, then employees are entitled to 32 days vacation.

The most important obligation on the part of parties to a collective agreement - also called "social partners" - is generally not found in the collective agreements: the obligation to maintain industrial peace. During the validity of a collective agreement, this obligation forbids any form of in-

dustrial action against working conditions as set out in the agreement. If a collective salary agreement expires on 31 December, for example, industrial action is not permissible until 1 January of the next year. Strikes for longer holidays, on the other hand, are allowable beforehand.

Collective wage, framework and basic agreements

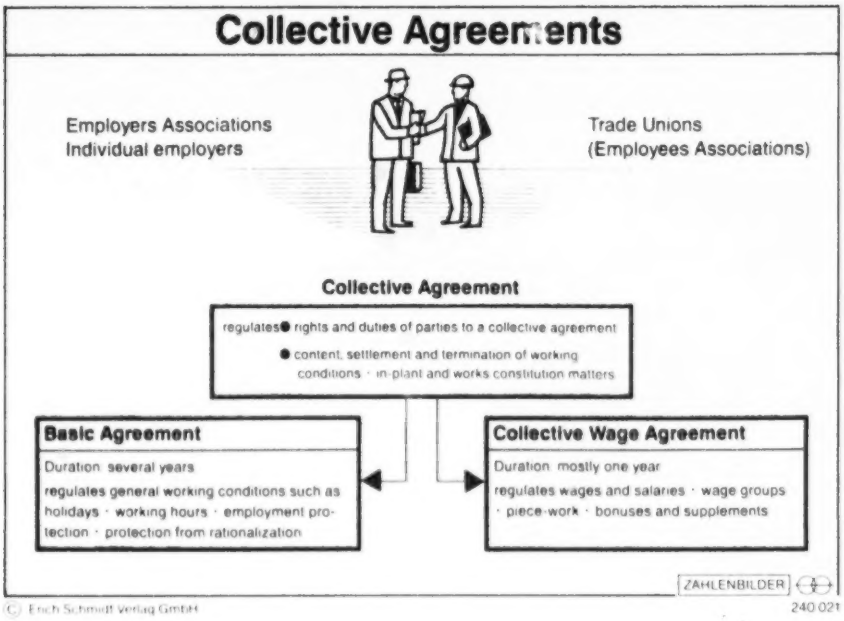
Collective agreements provide the means for collectively shaping working conditions. Depending on their substance, however, different types of collective agreement have developed which are of varying duration and which have different areas of application:

- As a general rule, the level of remuneration for blue and white-collar workers is agreed in collective wage and salary agreements.

- The wage groups, in particular, are laid down in the collective framework agreements. They determine the particular features an occupation must have before the employee qualifies to move up from Group 1, the lowest group with an hourly wage of DM 9.93, to Groups 2 or 3 with correspondongly higher hourly rates.

- The other working conditions are grouped together in the collective basic agreements. They include working hours, annual holidays, special leave, overtime and period of notice.

- There are also special agreements - in addition to the three mentioned above. They include, for example, supplementary old age and disability assistance in the building trade - for which a joint facility is provided by the employers and the trade unions.


Collective Agreements
Employers Associations
Individual employers
Trade Unions
(Employees Associations)
Collective Agreement
regulates ● rights and duties of parties to a collective agreement
● content, settlement and termination of working conditions · in-plant and works constitution matters
Basic Agreement
Duration: several years
regulates general working conditions such as holidays · working hours · employment protection · protection from rationalization
Collective Wage Agreement
Duration: mostly one year
regulates wages and salaries · wage groups · piece-work · bonuses and supplements
ZAHLENBILDER
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The diversity of the free collective-bargaining system is apparent from the large number of collective agreements in 1986, for example: there were 3,600 wage and salary agreements, 1,700 amending agreements, 500 agreements on training remuneration for apprentices and 400 basic agreements on working hours and holidays. As a rule, the agreements are concluded between employers and the trade unions representing their particular occupational sector. There are exceptions, however. Of the currently valid 44,000 agreements, 30,000 are association collective agreements and 14,000 company agreements. The 30,000 association agreements, though, have been concluded on behalf of almost 20 million gainfully employed persons whereas the company agreements only affect about half a million employees.

The agreements on working hours and holidays - as well as other benefits - also vary. Out of every thousand employees in the Federal Republic of Germany, all enjoy the right to a 40-hour week. Of this figure, however, 410 have a shorter working week of 37.5 to 38.5 hours, 650 are entitled to six weeks vacation annually, 910 to a holiday allowance and 950 to capital-acccumulation benefits.

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Equal rights for all

Strictly speaking, the collective agreement should only apply to trade-union members. It states in Paragraph 3 of the Collective Bargaining Act: "Members of the parties to a collective agreement and the employers, who themselves are party to a collective agreement, are bound by the collective agreement." If this stipulation were strictly adhered to, only about every third employee would benefit from a collective agreement because two-thirds of all employed persons are not "members of the party to a collective agreement", i.e. a trade union.

But even non-union members - often popularly referred to as "free riders" - benefit from the collective agreements. Equal treatment can be achieved in two different ways. The Federal Minister for Labour and Social Order can declare a collective agreement to be generally applicable, i.e. valid for all, if the employers, bound by the agreement, employ at least 50 percent of all employees in the area of application and general application is in the interest of the public. At the present time, there are some 600 generally applicable collective agreements of this nature, affecting about every fifth employee.

In addition, most contracts of employment contain the following reference to a collective agreement:

> "As remuneration for your work you will receive the collectively agreed wage of your trade group which currently amounts to DM ... in wage group ... . In other respects the provisions of the basic agreement for the employees in trade and industry in the ... industry apply.

Thus a non-union member has the same entitlements as his colleague who is a member of a trade union although the latter contributes to the capacity of his trade union to function with his membersip dues (an average of 1 percent of his gross pay).

(8)

Equal treatment on the job also applies to foreign employees. Although nationality is not included in Article 3 of the Basic Law, discrimination against foreign employees would invalid according to Paragraph 75 of the Works Council Constitution Act (right of election to works council). Collective agreements which ignore this are unknown.

Partners and parties to collective agreements

Collective agreements are negotiated by authorized representatives of the trade unions and the employers. They are sometimes known as social or collective agreement partners, and sometimes as parties to a collective agreement - depending on whether one wishes to emphasize what they have in common or what divides them.

For the employees, the following are authorized parties to collective agreements:

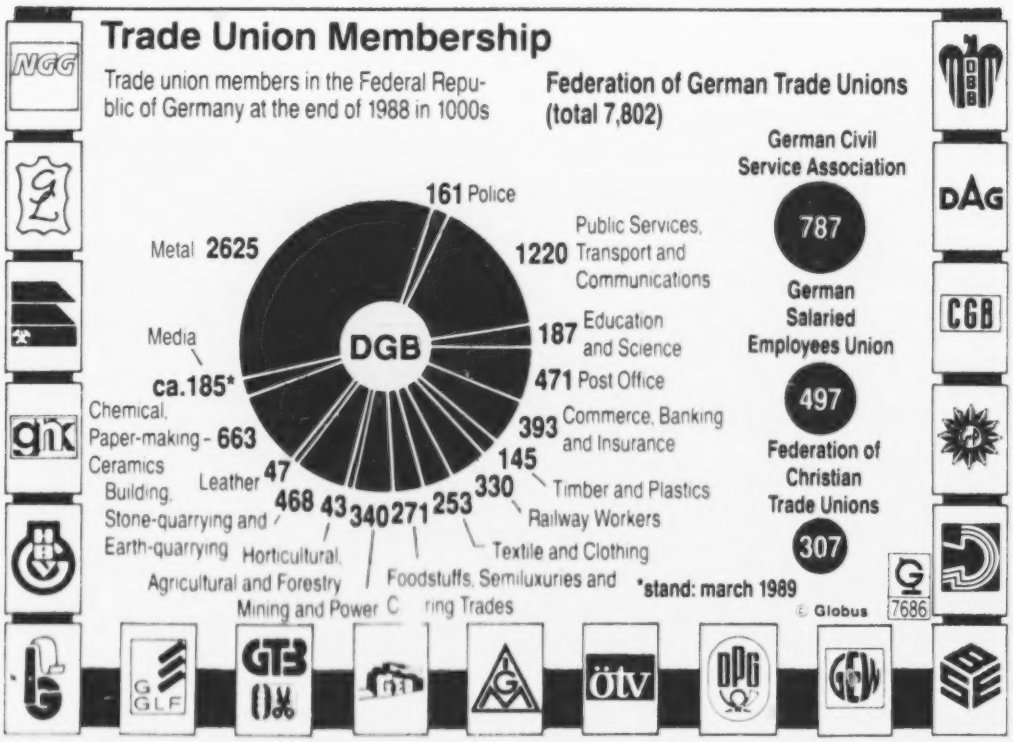
- the 17 individual trade unions in the Federation of German Trade Unions (DGB) with 7.8 million members, of whom seven million are blue and white-collar workers, and 800,000 civil servants,

- the Trade Union of German Salaried Employees (DAG) with 497,000 members,

- the Federation of Christian Trade Unions (CGB) with 307,000 members

- the Union of Senior Staff (ULA) with some 50,000 members,

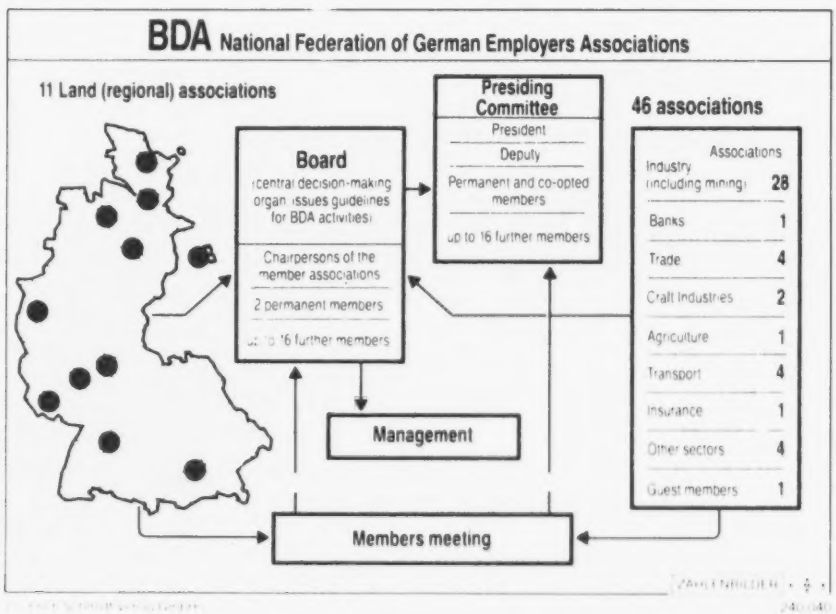
- The German Civil Service Association (DBB) with 787,000 members.



42 percent, i.e. 9.5 million out of a total of 24 million employees in the Federal Republic of Germany, are members of a trade union. The highest membership level is enjoyed by the civil servants (67.3 percent), followed by the blue-collar workers (53) and white-collar workers (24.3). The civil servants, however, enjoy a special position. Their pay and working conditions are regulated by parliament in accordance with the Federal Civil Service Act (BBG), and not by a collective agreement. Their interests as employed persons are looked after by staff representations and not by works councils. If one excludes the civil servants, every third employee is a member of a trade union authorized to be party to a collective agreement.

(10)

The employers are represented by the National Federation of the German Employers Association (BDA), the central organization of private employers from industry, trade, the craft industries, banks, insurance, agriculture, transport and newspaper publishers. The Employers Association of the Iron and Steel Industry, and public employers, are not members. In the iron and steel industry there is a mixture of employers' and employees' interests because directors representing the employees also belong to their collective bargaining commission. They, in accordance with ECSC industry's codetermination law, are co-appointed by the trade unions. This contravenes the Collective Bargaining Act. The public employers - the Federal Government, the Länder (constituent states) and local authorities - form their own collective bargaining association which conducts negotiations with the trade unions.



Like the Federation of German Trade Unions, the central organization of the employers' associations, refounded in 1950, is an "association of associations". The BDA's direct members

include the 11 Land and specialized central organizations as well as some 760 associations as indirect members representing 80 percent of all industrial enterprises, banks and insurance companies; they employ 90 percent of the total work force. The collective-agreement negotiations are mostly conducted by the regional trade associations. The history of the employers' associations is almost synchronous with that of the trade unions because both organizations are dependent on each other as partners or opponents. Following the foundation of the first Association of Independent Printers in Leipzig in 1869, numerous employers' associations were formed after 1890 as a response to the creation of new trade unions. They, too, had to discontinue their activity under Nazi rule (1933-45) and subject themselves to compulsory organization.

The round of negotiations - arbitration - industrial action

Collective negotiations take place according to firm rules as has been the practice for years. Often "old hands" sit facing each other at the negotiating table. This is why the public has given these talks the somewhat unflattering nickname of the "ritual". Even so, this "ritual" has its good sides; it damps down agressive tones and makes the outcome predictable.

The round of talks, the central element in this tug-of-war for shares in the social product, begins with an opening move by the trade union. Even before the one or two-year duration of a collective wage and salary agreement has expired, the trade union starts to express its dissatisfaction at the current agreements. The demand for higher wages or salaries is justified either by drawing attention to increased productivity by enterprises, divergence between company profits and employees' incomes or the rise in the cost of living. For some years now this has been accompanied by the demand for shorter working hours without loss of pay. This is based on the rationalization protection of employees against the increased use of ma-

chinery and the necessary reduction in unemployment.

This curtain raiser is followed by giving notice of termination of the collective agreement. This is not bound to any specific form and takes place usually via registered letter. On this occasion or shortly before negotiations commence, the trade union's demands are made known. The employers examine them, compare them with the state of the sector and their expectations and make a counter-offer which often amount to less than half the trade union's demand. As far as entrepreneurs are concerned, wages and salaries are just as much costs as raw materials, energy, transport and investments. The additional burden of higher labour costs has to be covered by increased production to prevent the company becoming uncompetitive and eventually having to give up completely.

The responsibility for giving notice of termination or for the conclusion of a collective agreement lies with the central committee, if the contract refers to the whole of the Federal Republic of Germany, and with the regional committee if only its region is concerned. A collective-agreement commission is formed which comes together with the negotiators from the other side. If both parties agree on a new collective agreement the latter merely requires the assent of the central committee and the responsible employers' body.

But this ideal situation occurs only rarely. If agreement is not reached then conciliation proceedings are instituted in the sectors in which, for the most part, an arbitration agreement exists. A commission, consisting of an equal number of employers' and employees' representatives, and with an independent chairman, attempts once more to achieve a reconciliation of interests. If the final result is rejected by just one of the two sides, the procedure is closed. Neither side can be forced to conclude a collective agreement. Even so, conciliation procedure is of significance in this case: it has delayed recourse to industrial action.

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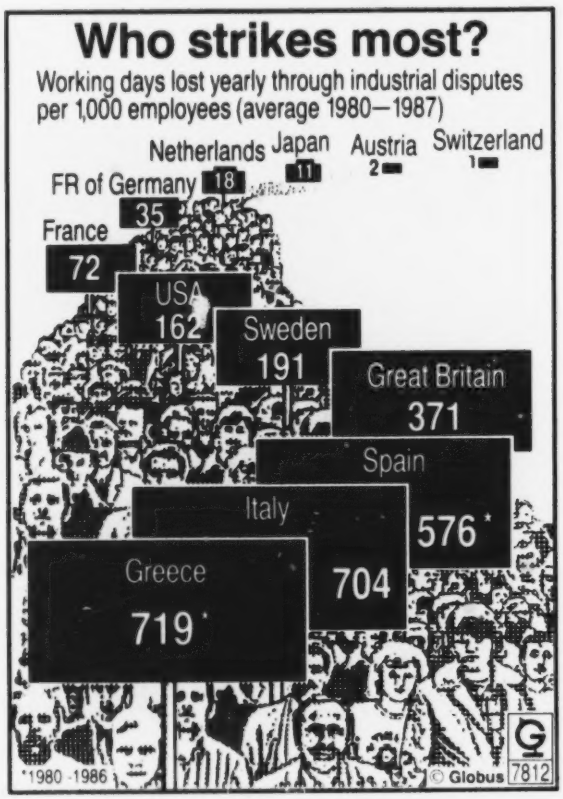
If arbitration fails, the collective agreement commission can recommend a strike ballot to the trade-union committee. 75 percent of the employees must vote in favour before a strike can be called. And even if the ballot turns out positive, the collective agreement commission can still try once more to reach a settlement. If this proves abortive, industrial action follows - something which has become increasingly rare in the Federal Republic of Germany in the last few years.



Why are strikes in the Federal Republic of Germany so rare? Here, a major role is played by the obligation to observe "industrial peace" during the validity of a collective agreement, the perfected collective agreement system, the organi-

(14)

zation of German trade unions into large, comprehensive unions for whole companies. In Great Britain, for example, as many as 50 trade unions may be represented within one firm.

German trade unions organize their strikes thoroughly. There are strike committees, pickets at factory gates who call on strike-breakers to display solidarity with the strikers and leaflets seeking the general public's understanding for the strike. More than 60 percent of the German population consider strikes justified - although 50 percent do make the reservation that they often find the demands excessive. Only 5 percent are of the opinion that the trade unions act too timidly and ought to ask for more.

Since strikers receive no wages, the unions have to pay them strike-money. According to the Employment Promotion Act (AFG) and labour court decisions, these payments must not only be made to those actually on strike; they must also be made to employees in the same firm or in other enterprises in the same industrial-conflict sector who, although not on strike themselves, cannot be employed because of the lack of ancillary supplies, energy, raw materials and other essential items resulting from the strike. This is designed to prevent selective strikes - "Stellvertreterstreiks" - in which a trade union, although only calling a strike in one key plant, succeeds in paralyzing a whole industrial sector because of lack of ancillary deliveries. In the case of other resultant effects - where it is not a matter of a selective strike - the Federal Employment Office steps in by making payments to those who, whilst not on strike, are nevertheless affected.

The Federal Employment Office may not intervene in an industrial dispute by paying unemployment benefits or short-time allowances. As a consequence, it cannot grant these benefits to employees who, through participation in industrial action, have become unemployed or are on short time.

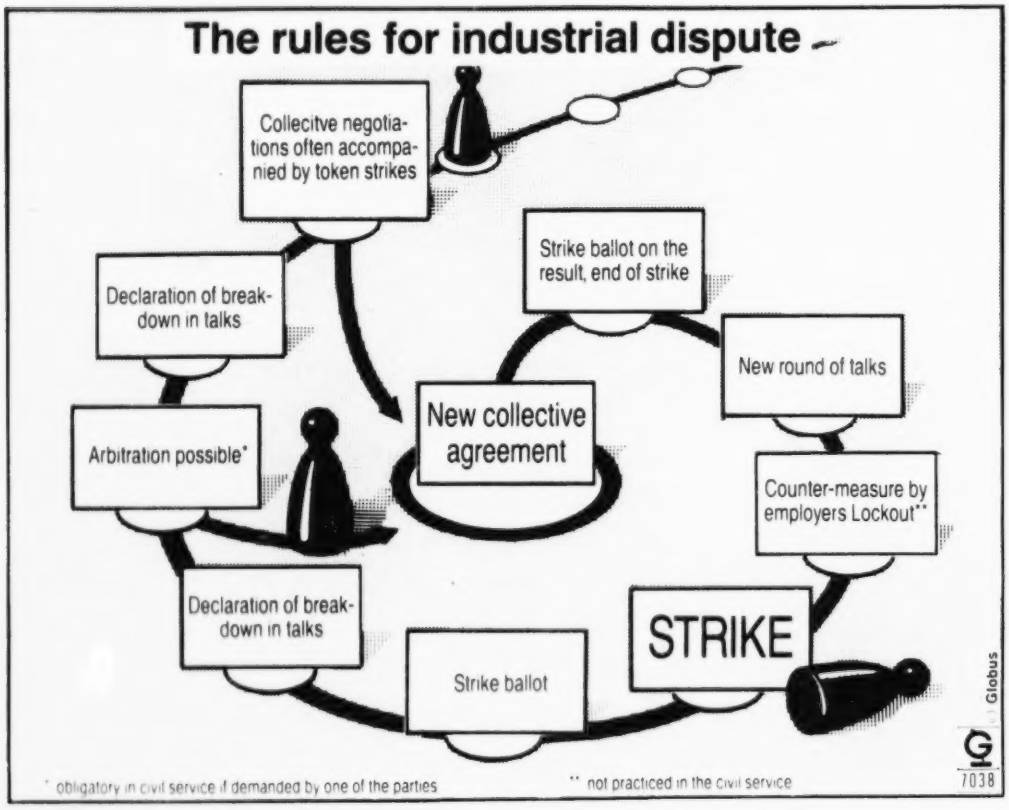
(15)

As a general rule, anyone who is only indirectly affected by an industrial dispute is entitled to assistance from the job-centre in accordance with the Employment Promotion Act. The exception, however, are unemployed persons or those on short-time whose firms - even though they themselves are only indirectly affected - come under the disputed collective agreement area-wise and technically.

Job-centres also pay no money to employees indirectly affected by the industrial dispute if the trade union has made the same principal demand for the employees of a firm which, while not coming under the collective agreement area-wise, does so technically in the disputed collective-agreement region or if the result of the industrial conflict is, in all probability, to be taken on by this firm.

Non-participants in industrial action can be affected if, for instance, there is a lack of ancillary supplies, energy, raw materials or other essentials, as well as by the fact that they can no longer sell their goods to a particular enterprise.

These provisions in the Employment Promotion Act are designed to exclude selective strikes, by means of which a trade union, for instance, can call a strike at little cost in a key industry which paralyzes many other firms or a whole sector - whilst job-centres provide employees with financial assistance.


The rules for industrial dispute –
Collecitve negotiations often accompanied by token strikes
Strike ballot on the result, end of strike
Declaration of breakdown in talks
New round of talks
New collective agreement
Arbitration possible*
Counter-measure by employers Lockout**
Declaration of breakdown in talks
STRIKE
Strike ballot
Globus
7038
* obligatory in civil service if demanded by one of the parties
** not practiced in the civil service

Strike and lockout - equal weapons in industrial action

Free collective bargaining in the Federal Republic of Germany is guaranteed in the Constitution. This also applies to industrial action as a means of implementing it. Unlike labour and collective agreement legislation, however, there is no law which regulates industrial dispute; it is case law administered by judges in the three-stage jurisdiction on labour matters (labour courts, higher labour courts and the Federal Labour Court).

(17)

The preconditions which judges require of a legal industrial dispute are as follows: it must be the final and last resort in the resolving of a conflict. It must be concentrated on the realization of collective-agreement demands (i.e. not a political strike!) and directed at the collective-bargaining partner who must be in a position to fulfil the demands of the opposite side. Aim and extent must not be glaringly disproportionate to the damage which could be incurred thereby. The industrial dispute must be conducted fairly and not by means of acts liable to prosecution.

Employers are also not powerless vis-à-vis the trade-union challenge. They have a weapon at their disposal: lockout. This has only been resorted to in recent years to terminate a prolonged strike or to thwart a selective strike. Since the last war, there have only been four large-scale lockouts: 1963 and 1971 (metal industry) and 1978 and 1984 (metal and printing industry). The trade unions have long been calling for a ban on lockouts since they destroy the negotiating parity achieved by the strike and give employers the upper hand. The Federal Labour Court has permitted lockouts to a limited extent if the opposing trade union has gained a negotiating advantage by adopting special tactics.

According to court rulings, the trade unions are free to pick their weapons: they can choose the means and extent themselves. The employers' ability to retaliate is subject to certain restrictions. Their extent is geared to the principle of commensurability. If 25 percent of employees in an industrial sector are on strike, a further 25 percent can be locked out. By such rulings the labour court judges are intent on establishing parity of weapons: neither side is to be in a position where it can force its will on the other.

Examples of collective agreements in practice

Questions concerning collective-bargaining law, controversies which emerge and then disappear again, and labour court decisions, can be best explained by referring to examples in practice. Following World War II and the lifting of the wage-freeze imposed by the Allies, trade union collective-bargaining policy was initially focussed on achieving higher wages. Here, the gradual overcoming of unemployment and steady economic growth came to their aid. The loss of jobs through technical change (second industrial revolution) was offset with the help of economic expansion. Poor working conditions were compensated by special allowances for dirty work, night shifts etc.

The strike by metal workers in Schleswig-Holstein in 1972 introduced a new element in collective agreements. For the first time, the trade union fought and won the battle for continued payment of wages during illness - something which now applies to all economic areas in the Federal Republic of Germany for the first six weeks of illness. The step-by-step realization of the 40-hour week which is now the accepted rule - and even undercut in many cases - represents a contribution to the reduction of work stress and more humanity.

New ground in collective bargaining was also broken by the metal workers' in Bundesland North Württemberg-North Baden - well known for its motor vehicle industry - in 1973. They fought for and won a new collective framework wage agreement. By introducing breaks in phased and conveyor-belt production, further humanization was achieved. The fact that an aim of this nature was included in collective bargaining stems from the increased claims of employees for whom wages and salaries no longer constitute adequate compensation for the wear and tear on health.

The emerging economic crisis (first oil-price shock) in 1973 prompted the trade unions to change the points of emphasis in their collective-bargaining policy. Although wages and salaries remained their principal concern, they were now accompanied by preservation of jobs and the level of social acquisitions. The means deployed here varied. The trade union for workers in the Foodstuffs, Semiluxuries and Catering Trades (NGG) succeeded in concluding a basic agreement with the cigarette industry in 1976 which provided works councils with full codetermination rights in rationalization measures, engagement of new staff and dismissals. The same industrial sector was also the pacemaker in reducing the working week - including the optional introduction of the 35-hour week.

The basic agreement for employees in the printing trade even includes quantitative and qualitative staffing regulations which lay down the minimum number of employees per machine and the qualifications required by skilled staff.

In early 1982 - an exceptionally bad year economically - the metals workers' union (IG Metall) in Northrhine-Westphalia, the largest collective-agreement region - joined later by "Automobile Land" North Baden-North Württemberg - demanded a pay increase of 7.6 percent, a minimum basic sum of DM 120 for the low-wage earners such as temporary staff and unskilled workers. The employers made a counter-offer of 3 percent and called for a pay-increase delay of several months - in other words, a temporary prolongation of the old agreement. The dispute which ensued had a signal effect for the whole of the Federal Republic of Germany. Only after 200 token strikes on 50 days was a compromise reached through the offices of the arbitration commission which had been set up. Agreement was finally reached on a pay increase of 4.2 percent without an intervening delay.

Of late, the reduction of the working week to an eventual 35 hours is assuming an ever important role. Although the trade

unions have still not achieved a breakthrough in this conection, they have succeeded in making an inroad. The working week in the metal and printing industries has been reduced by several hours. Initially, the employers in these two sectors put up a stiff fight and were finally offered greater flexibility of working hours as a conciliatory gesture by the trade unions. It was no longer to be geared to the traditional pattern of an eight-hour day, five days a week. The working hours of the employees are compressed into blocks of several consecutive days a week - followed by a few days off. Saturday-work is also permissible although the conditions for this are very stringent.

In 1988 a reduction in working hours was renegotiated for 5.2 million employees. Thus, by the end of 1988, a working week of under 40 hours was agreed for some 14.6 million employees. In some cases, however, this agreement only takes effect from 1989 or 1990 onwards. The standard working week for all employees covered by collective agreements averaged 38.97 hours at the end of 1988.

A collective agreement for Volkswagen workers is also breaking new ground. Accordingly, employees working in normal shifts can earn time-credits which can eventually result in having an extra day-off per calendar month.

As far as employees are concerned, the advantage of flexible working hours lies in the prolonged free-time which can be spent with the family. The larger number of shifts means longer operating time for the employers' machines, and thus greater productivity.

Works constitution and codetermination

The right of codetermination by trade unions in the organizing of "working and economic conditions" - as provided for by the Basic Law - is not restricted to collective-agreement rights.

It extends via the Works Council Constitution Act and the related right of codetermination into the depths of daily operational routine and - in the case of joint-stock companies - into the supervisory board. German enterprises employing more than 20 persons have had works councils since 1918. After the end of the National Socialist era and World War II, they were re-allowed by the Western Occupation Powers. The Works Council Constitution Act, however, did not come into being until 1952 after wearisome, parliamentary debate. The currently-valid act is the 1972 version which was amended in 1988.

The purpose of this act is to strengthen partnership in enterprises through the rights of elected employees' representatives to participation and codetermination. Cooperation between works council and works management in an atmosphere of trust is the uppermost principle. Industrial-conflict measures must not be employed against one another; disputes between trade unions and employers remain unaffected by this. The Works Council Constitution Act applies to all firms in the private sector of the economy with more than five employees over 18 years of age. It regulates

- the individual right of employees at their place of work to information, consultation and discussion on matters which directly concern employees at their place of work (such as access to personal files),
- codetermination by staff via the works council and representation of young employees,
- codetermination at company level through employees on the supervisory board.

The works council has to ensure that the currently-validlaws ordinances, prevention of accident regulations, health regulations, collective agreements and works agreements for the benefit of the employees are observed. It is the central representative organ of a firm's employees - whether the firm

be great or small. A distinction must be made between the works council's rights of consultation and information (staff planning, in-plant facilities for vocational training, proposed changes in the firm) and its rights of codetermination (working regulations, daily and weekly working time, holiday policy and holiday plan, prevention of industrial accidents and illnesses, social facilities, pay policy, piece-work and bonus rates).

Firms with more than 100 employees must set up an economic committee, consisting of members of the works council and employers' representatives. The committee must meet once a month and inform the employees' representatives on the following matters:

- the economic and financial situation of the enterprise,
- production and marketing situation,
- investment and rationalization programmes,
- transfer, amalgamation of parts of the firm,
- changes in the firm's purpose or its organization.

Because of the diversity of their commitments, members of works councils are released from their work duties in firms of a certain size upwards.

Whereas the works council is an institution at works level, i.e. technical production and administration, the supervisory board is a company body. Its duties are centred mainly on the appointment and supervision of management. According to the Works Council Constitution Act, one-third of supervisory boards in joint-stock companies or similar corporations with a work force of up to 2,000 persons must consist of employees. These are elected by all employees in a firm who are entitled to vote.

In 1976 a new Codetermination Act took effect which regulates the numerical parity of supervisory boards in joint-stock com-

panies with more than 2,000 employees. This new Codetermination Act affects 470 industrial and building companies, 45 banks, insurance companies and major publishing houses, 20 commercial and catering firms and 39 public transport and utility undertakings with a total work force of 4.5 million persons. The composition of the supervisory boards depends on the size of the enterprise. Whenever the employees' and shareholders' benches enjoy equal representation, the chairman of the supervisory board has the casting vote when voting takes place.

The Codetermination Act in the coal and steel industry (ECSC codetermination) also makes provision for special employee participation in management in the shape of a director representing the staff. He cannot be appointed or dismissed against the majority vote by the supervisory-board members who are proposed by the works council and trade unions.

Foreign employees are also entitled to vote

At 65.39 percent, the members of the Federation of German Trade Unions (DGB) represent the strongest block in works councils. Second place is occupied by non-union members at 27.51 percent. The German Salaried Employees Union gained 5.56 percent in the latest works-council elections, the Federation of Christian Trade Unions 1.04 percent and the Senior Staff Union 0.14 percent. The individual percentages vary according to the industrial sector. The German Salaried Employees Union, for instance, has a sort of stronghold in the phono industry where their representation in works councils comes to 47.39 percent. This, however, little influences the picture as a whole.

After all, the DGB, which enjoys an organizational level of 34.49 percent in the work force, has a share of 65.39 percent in the works councils, i.e. almost double as much. At 79.17 percent , its domain is the workers' works councils as opposed to 49.89 percent in the salaried employees' works councils.

Two major camps clearly emerged in the latest works-council elections in 1984 and 1987: the DGB and non-union members.

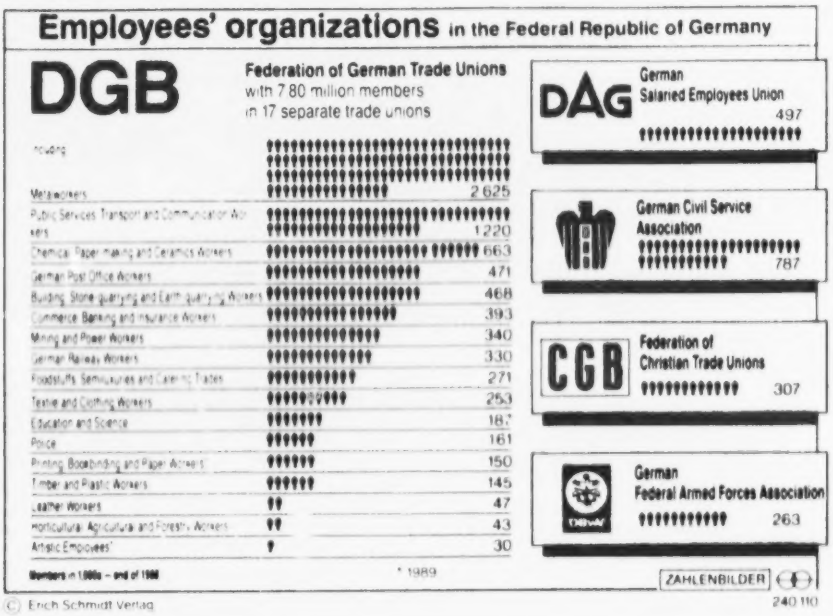
Before the Works Council Constitution Act was amended in the year 1972, only foreign employees from EC member countries were eligible for election to works councils - and only then after being in a firm's employ for three years. These restrictions were removed in the amended version of the Act in 1972. Now, employees from non-EC countries also have the right to vote and are eligible for election: in other words, they are allowed to take full part in works-council elections and can stand as candidates. The metal-workers' trade union established that there was a marked jump in the number of works-council mandates held by foreign employees in their industrial sector - from 150 in 1968 to 1,445 in the 1972 elections.

Analyses have revealed, however, that, whilst foreign colleagues take part in a committed manner and in great numbers in works-council elections, they seldom take advantage of the opportunity to stand as candidates. Despite this isolated example in the metal industry, the overall proportion of foreign employees in works councils is still no more than 4.71 percent. The reasons for this are given as follows: language barriers, the complicated nature of German codetermination, the fear of political commitment.

The socio-political aims of the trade unions

On the strength of its large membership and its powerful organization, the Federation of German Trade Unions - which describes itself as a "single union" - is the leading light in the trade-union camp. Its 17 affiliated trade unions are the "spearhead" in collective-agreement disputes with the employers. The DGB derives from the "General Commission of Trade Unions in Germany" as the umbrella organization for Socialist trade unions. Its affinity with the German Social Dem-

ocratic Party (SPD) has historical roots. This traditional solidarity is also apparent in the interlocking of personnel. Only one of the 17 chairpersons of the DGB trade unions is a member of the Christian Democratic Union (CDU): Hermann Lutz from the Police Trade Union.


Employees' organizations in the Federal Republic of Germany
DGB
Federation of German Trade Unions
with 7.80 million members
in 17 separate trade unions
Metalworkers 2,625
Public Services, Transport and Communication Workers 1,220
Chemical, Paper, Mining and Ceramics Workers 663
German Post Office Workers 471
Building, Stone quarrying and Earth quarrying Workers 468
Commerce, Banking and Insurance Workers 393
Mining and Power Workers 340
German Railway Workers 330
Foodstuffs, Semi-luxuries and Catering Trades 271
Textile and Clothing Workers 253
Education and Science 187*
Police 161
Printing, Bookbinding and Paper Workers 150
Timber and Plastic Workers 145
Leather Workers 47
Horticulture, Agriculture and Forestry Workers 43
Artistic Employees' 30
* 1989
DAG
German Salaried Employees Union 497
German Civil Service Association 787
CGB
Federation of Christian Trade Unions 307
German Federal Armed Forces Association 263
ZAHLENBILDER
240 110
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All others are members of the SPD. Seven members of the DGB Executive belong to the SPD. Of the 519 Members of the 11th German Bundestag, 304 are trade union members, i.e. 58.6 percent. 187 SPD Members, who belong to the DGB trade unions, form the largest group, as shown by the following overview:

(3 CDU/CSU Members belong to the German Journalists Association)

Political considerations, which play a part in collective bargaining, are not discernible. They would contravene the party-political neutrality to which the DGB is committed. It identifies itself fundamentally with the free, democratic state. But as far as social policy is concerned, however,the trade unions have clearly defined their position. The DGB's 1981 Basic Programme states, for example:

> "The unified trade union makes competitive trade unions superfluous. As the joint organization of workers, salaried employees and civil servants,it looks after the economic, social and cultural interests of all employees and their families. The uncertainty of jobs, the unjust distribution of incomes and wealth, unequal educational opportunities and the dependence on economic power have still to be surmounted. The trade unions are still fighting for the further development of codetermination. By this means they want to bring about a re-organization of the economy and society to give employees the equal right to participate in the economic, social and cultural decisions."

The DGB did not recognize competitive economy until 1963. Up to that time, several DGB trade unions had upheld their demand for economic planning and the nationalization of major industrial products. Even today, the demand for the setting-up of supraregional economic and social councils still turns up in programmatic statements.

The employers' associations, on the other hand, have identified themselves with the principles of market economy since the foundation of the Federal Republic of Germany in 1949. The basic policy of the National Federation of German Employers Associations of 1975 called on its members

> to display a sense of responsibility to public welfare,
>
> to adopt free-market behaviour in competition with others,
>
> to think in pansocial terms,

(27)

to actively participate in the free social order

to cautiously assess political pragmatism.

The Federation is intent on pursuing a policy of "critical partnership, towards all major political parties, social groups and the trade unions. With only 29 Members, the manufacturers, entrepreneurs, self-employed businessmen and independent representatives of trade and industry have only a small number of seats in the present Bundestag: 22 CDU/CSU, 4 SPD and 3 FDP.

The basic principles of the BDA's social policy call for a safeguarding and expansion of market economy, greater flexibility in working conditions and the activation of socialpartnership. State controls should also be further reduced.

Outlook

Free collective bargaining, which permits no state interference or controls in the relationship between the parties to a collective agreement, has proved its worth since the foundation of the Federal Republic of Germany in 1949.

Despite many aggressive a tone and wearisome tug-of-war at the negotiating table, it has brought about a reconciliation of interests time and again. And even if one side or the other has been disappointed with the final outcome, it has eventually turned out to be tolerable with the passing of time. Free collective bargaining has also rendered the general public a service: through reciprocal information and exchange of views, it has helped create better understanding between employers and trade unions and the removal of the remains of class warfare.

Free collective bargaining needs equilibrium and mutual independence on the part of employers and trade unions. This equi-

librium is not a natural phenomenon and must be constantly weighted and restored whenever necessary. The trade unions must not dictate their conditions to the shareholders and the shareholders must not force their will on the employees. Preventing this is a constant duty. As the demands by the Federation of German Trade Unions in their Basic Programme show (extension of codetermination, prohibition of lockouts), there will be future battles about the rules of the game and content.

Conflicts also cannot be ruled out in the future. But employers' associations and trade unions are agreed on the fact that free collective bargaining, the Works Constitution and codetermination, as practised in the Federal Republic of Germany, must also be protected by the European Social Charter as soon as the European internal market has been realized in 1993. The opportunities of cooperation and the rights of codetermination on the part of employees, works councils and trade unions in the Federal Republic of Germany are the greatest in the Community of Twelve. No-one wants to export these social rights to the partner countries: by the same token, however, no-one in the Federal Republic of Germany wants to relinquish them.

(IN-Press)

Important addresses

Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA)
(National Federation of German Employers Associations)

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Deutscher Gewerkschaftsbund (DGB)
(Federation of German Trade Unions)
- Bundesvorstand -
(National Executive)

Hans-Böckler-Straße 39
D-4000 Düsseldorf 30

Deutsche Angestellten-Gewerkschaft (DAG)
(German Salaried Employees Trade Union)
- Bundesvorstand -
(National Executive)

Karl-Muck-Platz 1
D-2000 Hamburg 36

Union der Leitenden Angestellten (ULA)
(Senior Staff Union)

Alfredstraße 77-79
D-4300 Essen 1

Christlicher Gewerkschaftsbund Deutschlands (CGB)
(Federation of German Christian Trade Unions)

Konstantinstraße 13
D-5300 Bonn 2

Deutscher Beamtenbund
(German Civil Service Association)
Bund der Gewerkschaften des öffentlichen Dienstes (DBB)
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